No. 72

In the Supreme Court of the United States

OCTOBER TERM, 1956

JOHN M. LEHMANN, OFFICER IN CHARGE, PETITIONER,

v.

UNITED STATES OF AMERICA, EX REL. BRUNO CARSON
OR BRUNO CARBAJETT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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I. THE ISSUES RAISED IN PETITIONER'S BRIEF ARE PROPERLY BEFORE THE COURT

As his first point respondent argues that the question of whether he had a "status" within the meaning of the savings clause was not raised below nor in the petition for certiorari. We submit that the issue of the applicability of the savings clause to one in respondent's position was implicit in the conflicting decisions below. It was specifically raised in the petition for certiorari. The sole question there raised was:

> Whether respondent * * * had a "status" of non-deportability which was preserved to him by the savings clause of the 1952 Act despite

the fact that Section 241 (d) of that Act expressly makes retroactive the grounds for deportation specified in the Act. [Pet. p. 2]

II. SECTION 241 CONTAINS SPECIFIC RETROACTIVE PROVISIONS MAKING THE CONDUCT HERE INVOLVED SUBJECT TO PRESENT DEPORTATION

A. RESPONDENT CONCEDES, AS HE MUST, THAT SECTION 241 CONTAINS RETROACTIVE PROVISIONS

Section 241 of the Immigration and Nationality Act of 1952 contains the grounds which make persons subject to deportation. The section is nine pages long covering all of the specific grounds for deportation. As to each ground, the language of the statute indicates whether it is to be prospective only or whether conduct prior to the 1952 Act is to be a ground for deportation. For the convenience of the Court the entire section has been reprinted as an Appendix to this reply brief (*infra*, pp. A–1–A–9). In each provision the words relating to the time at which the conduct or offense must occur have been put in bold face. It will be seen that in the various specific provisions substantial attention must have been devoted to the problem of timing. For example, within subsection (11) (*infra*, p. A–5), under which respondent Catalanotte in the companion case, No. 435, has been ordered deported, a distinction is made between narcotic addicts and those convicted of traffic in narcotics. An alien who "*hereafter* at any time *after entry* has been" an addict is to be deported, whereas for narcotics convictions the deportation requirement covers an alien who has been convicted "at any time".

Faced with this clear and specific language, respondent has conceded that the section is retroactive:

> We admit as did the Court below (R. 30) that some provisions of section 241 are retroactive and that others are not. Where prospective application of section 241 was desired, the word "hereafter" was used. [Resp. Br. p. 28.]

Since most provisions of section 241 are concededly retroactive and since they explicitly make the conduct involved in these cases grounds for present deportation, the first question before the Court is a narrow one: As between the specific provisions of section 241 and the general language of the savings clause in section 405 (a), which controls? Or, put in another way, is the retroactive effect which is specifically and concededly provided in section 241 "specifically provided therein" within the meaning of section 405 (a)? We submit that the Court should resolve this issue in favor of section 241 whichever way the question is stated.

B. THE SAVINGS CLAUSE AFFECTS MATTERS ONLY NOT COVERED BY OTHER SPECIFIC PROVISIONS; ITS EFFECT IS NOT TO OVERRIDE ALL OTHER SECTIONS OF THE ACT UNLESS THEY ARE EXPRESSLY STATED, IN TERMS, TO BE EXCEPTIONS TO THAT CLAUSE

From respondent's brief one might conclude that the preservation of the status quo was the most important consideration in the adoption of the Immigration and Nationality Act—that the position of all aliens then within the United States was to be unaffected by the adoption of the Act. Respondent argues that, notwithstanding the explicit retroactive

language of the Act, no alien was made subject to deportation who was not already subject to deportation. This effect, he contends, flows from section 405. Such a construction of the savings clause is wholly unwarranted.

Respondent's suggested construction would make the 1952 Act completely out of step with its predecessors. Both the Alien Registration Act of 1940, 54 Stat. 670, 673, and the Internal Security Act of 1950, 64 Stat. 987, 1008, were effectively made retroactive so that persons not theretofore deportable became deportable for conduct which occurred prior to the adoption of those acts. The retroactive aspect of the 1940 statute was litigated in *Harisiades* v. *Shaughnessy*, 342 U. S. 580, and that of the 1950 Act in *Galvan* v. *Press*, 347 U. S. 522. The retroactive wording used in the 1952 Act is even more explicit than the "unmistakable language" of the 1940 Act referred to by Mr. Justice Jackson. 342 U. S. at 593. Yet respondent asks that the 1952 Act be construed as not affecting the deportability of any alien then in the United States. Such a departure from the earlier pattern is out of keeping with the known Congressional attitude and purpose when the 1952 Act was passed.

Respondent seeks to construe the savings clause as overriding all provisions of the Act which do not expressly state, in terms, that they are not to be governed by that clause. Such a construction of the savings clause is contrary to its plain meaning, contrary to the way the phrase "specifically provided" is used in the Act, and would make a rigid formula override obvious Congressional intent.

Section 405 (a) states the policy that is to apply to those matters as to which there is no inconsistent specific provision in the Act. In order not to be governed by the savings clause it is only necessary that there be a specific provision. There need not be a stated exception.

Assuming, for the sake of argument, that respondent had a "status" within the meaning of section 405 (a), he would remain non-deportable under that clause unless there were a specific provision making him deportable, *i. e.*, unless it was specifically provided otherwise. But in this case there is a specific provision, in fact two—section 241 (a) (1) and section 241 (a) (4), which specifically provide that persons who in the past have done what respondent has done are now to be deported. The phrase "otherwise specifically provided" as used in section 405 (a) means that the broad and general policy of the savings clause is to apply unless there are conflicting specific provisions. It does not demand, as respondent would have it, that there be "a specific provision stating that the prior law is not continued in force and effect." (Resp. Br. p. 34). Any such rigid requirement of "magic passwords" is inconsistent with the basic search for legislative intent and contrary to the explicit and unanimous holding of this Court in *Shomberg* v. *United States*, 348 U. S. 540.

Section 241 (d) provides for the retroactive effect here under discussion—

> Except as otherwise specifically provided in this section * * *

Within section 241 the exceptions are specifically provided by the use of the word "hereafter". There is no statement that certain subsections or offenses are not to be governed by section 241 (d). There is no such language as "notwithstanding the provisions of section 241 (d)". Respondent apparently agrees that within section 241 the word "hereafter" is enough to make something "otherwise specifically provided" so as to take it out of section 241 (d). (Resp. Br. p. 28). He does not attempt to explain why in his view the phrase "otherwise specifically provided" demands so much more when it appears in section 405 (a).

C. THE LEGISLATIVE HISTORY OF THE SAVINGS CLAUSE DEMONSTRATES THAT IT WAS NOT INTENDED TO DEFEAT THE DEPORTATION PROVISIONS OF SECTION 241

1. Respondent points out that the savings clause began its legislative career in the 1952 Act in Title III where it applied only to naturalization proceedings. The words "status and condition" were inserted at this stage. (Resp. Br. p. 14.). It is thus clear that any specific intent as to the meaning of those words related to naturalization, not to deportation. The origin of the savings clause as a part of the naturalization provisions also explains why it is only in the naturalization sections of the 1952 Act that there are stated exceptions to the savings clause, and then only to section 405 (b) dealing with naturalization petitions.

At this stage (S. 3455) section 241 contained the grounds for deportation here involved and section "241 (d) was there set forth as in the final version of the law." (Resp. Br. p. 14). If the bill had been

adopted as then drafted there would be no question but that respondent would be deportable since the savings clause was not then applicable to the deportation provisions. Respondent's argument is that the shift in location of the savings clause completely changed the effect of section 241. It is submitted that no such conclusion can be drawn from the change in location of the savings clause or from the failure to insert at this stage a cross reference in section 241 to section 405 (a). (See Resp. Br. p. 30). Most of the subsections in section 241 then contained the specific provisions as to time of offense now enacted. Others, such as subsection (11), which then said "has been convicted" of a narcotic offense, were amended by inserting the phrase "at any time". And, at the time when the savings clause was made applicable to deportation provisions, section 241 (d) was retained.

2. We do not agree with respondent's explanation of the purpose and effect of section 241 (d). Respondent states that the repeal of prior laws would have rendered previously deportable aliens immune and that accordingly, "to cover deportable aliens under pre-existing law, it was necessary to provide in section 241 (d) that the grounds of deportation be retroactive." (Resp. Br. p. 14). This explanation seems wrong on many counts.

First, the general savings statute, 1 U. S. C. 109, would appear to prevent any immunity by virtue of repeal of prior laws unless the new act should so expressly provide. Second, section 241 (d) was not drafted in a way which would carry forward prior liability for deportation. It was explicitly drafted so that the new, and broader, grounds would apply to

factual situations that had occurred earlier. Third, when the savings clause of section 405 (a) was made applicable to deportation proceedings, section 241 (d) was retained. If it was solely designed to make persons currently deportable who were deportable already this was accomplished, under respondent's view, by the savings clause and 241 (d) could have been struck.

3. The purpose of section 241 (d) is more correctly understood if it is compared with its ancestor in the 1940 Alien Registration Act, 54 Stat. 673, and in the Internal Security Act of 1950, 64 Stat. 1008, each of which read:

> The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

This clause was inserted in those acts to make new grounds of deportation retroactive. Section 241 (d), based upon them, was for the same purpose.

The legislative history demonstrates that section 241 was retroactive as to new grounds for deportation and originally was not subject to the savings clause. There is no indication that the moving of the savings clause to the end of the Act was intended to defeat the designed effect of section 241.

D. THE CONSTRUCTION OF SECTION 241 URGED BY RESPONDENT IS STRAINED, CONTRARY TO ITS PLAIN PURPOSE, AND WOULD MAKE SOME OF ITS PROVISIONS MEANINGLESS

Respondent asks the Court to hold that section 241 does not contain "specific" provisions within the mean-

ing of the savings clause, and that the savings clause preserves for any alien who could not be deported prior to its adoption a status of non-deportability. Should the statute be construed in this manner it would mean that all the careful drafting as to tenses in section 241 (see Appendix, *infra*) was meaningless. Congress might as well have begun each section with "hereafter", for the new provisions would only have prospective effect. No new language would make an alien deportable for past conduct since, under respondent's view, a status of non-deportability was to be continued. There would be no need to refer to prior offenses which were already a ground for deportation since, under respondent's view, a status of deportability would also be continued. In short, the entire retroactive nature of section 241—conceded by respondent—would be in name only, since the provisions would only have prospective effect.

But it is plain on the face of the statute that Congress intended to have aliens who were not then deportable deported for prior conduct. Such an intent would be completely frustrated by construing the savings clause as asked by respondent. That Congress wanted deported any alien who had ever been convicted of traffic in narcotics is clear from subsection (11) (*infra*, p. A–5). One other example of how respondent's construction of the Act would make provisions meaningless may be pointed out.

Under subsection 17 (*infra*, pp. A–6–A–7) an alien is made deportable if the Attorney General finds him to be an undesirable resident by reason of a conviction for violating the Selective Training and Serv-

ice Act of 1940, an act which was no longer in effect five years prior to the adoption of the Immigration and Nationality Act. Violations of the 1940 Act (which must have occurred prior to 1947) were not a ground for deportation prior to 1952. Respondent's construction of the Act would make this provision a nullity. Any alien who had violated the Selective Training and Service Act of 1940 would, under respondent's theory, have a status of non-deportability which would be saved by the Act; despite the explicit provision of section 241 (a) (17) no alien could be deported for violating the 1940 Act.

Respondent urges that the Court must adopt his construction of the Act or else the Immigration Service will be required to re-examine thousands of cases of aliens who have had their status adjusted, who have been granted suspension of deportation, or who have had private bills passed in their behalf. There is no merit in this contention. No one has suggested that the private bills were repealed by implication; they certainly were not done so expressly. No one has suggested that Congress intended to upset suspension cases which, as respondent points out, "it had approved itself." (Resp. Br. p. 26.) Where an alien has had his status adjusted, the original entry is made legal or he has a subsequent legal entry. This Act, like its predecessors, has never been construed to require deportation under such circumstances.

Respondent appears to argue that there is no freedom to construe a statute reasonably. We submit

that the most reasonable construction of section 241, taken together with the savings clause, is that Congress intended certain categories of aliens to become deportable by virtue of this Act—that the provisions as to retroactivity had some meaning—and that at the same time Congress did not intend to open up all cases where an alien's status had been altered by legislative or administrative action. The statute does not require respondent's rigid insistence on one extreme or the other.

The subsections of section 241 provide the various times at which the conduct occurs which makes an alien subject to deportation. These subsections themselves determine whether the ground is prospective or retrospective. Section 241 (d) (*infra*, p. A–9) provides that aliens shall fall within these classes notwithstanding the date of entry and notwithstanding the time at which the relevant facts occur. Under these specific provisions the alien is not to be benefitted by the fact that the events occurred at a time when the law was different rather than at the present time. There is no provision in section 241 that it shall be applicable to an alien falling within the enumerated classes notwithstanding an adjustment of status, a suspension of deportation, or a private bill—and we read none into it.

The retroactive nature of section 241 does not wipe out events that have occurred, it merely requires that they be judged by present law. The facts by reason of which one is deportable or nondeportable are to be judged by the new law, rather than the old. In the

terms of section 241 (d) the new provisions are to be applicable "notwithstanding * * * that the facts * * * occurred prior to the date of enactment of this Act." The new law is applied to *all* the facts relating to an alien's deportability, not just the crimes or offenses.

Applying the statute to the cases suggested by respondent his fears are seen to be unfounded. A person who had a suspension of deportation under the old law was not deportable. If such a suspension had occurred after the passage of the new Act he would still be not deportable. The same is true for private bills and adjustments of status, as to legality of entry or permanency of residence. If they had occurred after the passage of the new law (as they must be judged under section 241 (d)) the alien would still be nondeportable.

We apply the same standard to respondent's case. If the conditional pardon had occurred after the passage of the Act it would not protect him from deportation; therefore his deportation is required. If the passage of five years after illegal entry is judged by the new law it, too, is not enough to bar deportation. The retroactive nature of section 241 only requires that prior facts be judged by the new law, it does not wipe out reasons for not being deported which were valid under the old law and which remain valid under the new law.

III. RESPONDENT FAILS TO SHOW THAT ONE IN HIS POSITION WAS CONSIDERED TO HAVE THE KIND OF "STATUS" PROTECTED BY THE SAVINGS CLAUSE

Should the Court agree that section 241 specifically provided for the deportation of persons in respond-

ent's position, there is no need to consider whether respondent had a "status" within the meaning of the savings clause, section 405 (a) of the 1952 Act. Obviously, as respondent points out, the word "status" can be used to describe any position or condition or lack of it. The question here is whether an alien illegally in this country but not at the time subject to deportation had the kind of rights intended to be carried forward under section 405 (a), except where there were specific provisions to the contrary. Respondent fails to show any evidence that section 405 (a) was intended to apply to persons in that circumstance. He does show that the word "status" was originally inserted in the Act to refer to naturalization provisions, not deportation. (Resp. Br. p. 14). By referring to suspensions of deportation, adjustment of status, and private bills, respondent also shows the sort of rights that were clearly included within the savings clause. The contrast between the position of such aliens and respondent demonstrates as much as anything else respondent's lack of "status". (See Pet. Br. pp. 19–21.)

Respondent's concept that the right to continue an illegal residence without being deported is a "status" goes too far. Under the same theory any alien, not deportable under the old law, could claim that the standards of that law must be applied even as to future offenses. If now being charged with offenses made deportable under the new Act he would claim that under the old law he had the right to do those things without being deported—a valuable right or

status preserved to him by the savings clause. And aliens abroad could even claim the preservation of a status of admissibility.

Respectfully submitted,

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Solicitor General.
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Assistant to the Solicitor General.

MARCH 1957.

APPENDIX

SECTION 241 OF THE IMMIGRATION AND NATIONALITY ACT OF 1952, 66 STAT. 204–208

WORDS RELATING TO THE TIME AT WHICH THE REASON FOR DEPORTATION OCCURRED HAVE BEEN PUT IN BOLD-FACE TYPE

General classes of deportable aliens

SEC. 241. (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) **at the time of entry was** within one or more of the classes of aliens excludable by the law **existing at the time of such entry;**

(2) **entered** the United States without inspection or at any time or place other than as designated by the Attorney General or **is** in the United States in violation of this Act or in violation of any other law of the United States;

(3) **hereafter, within five years after entry, becomes** institutionalized at public expense because of mental disease, defect, or deficiency, unless the alien can show that such disease, defect, or deficiency did not exist prior to his admission to the United States;

(4) **is convicted** of a crime involving moral turpitude **committed within five years after entry** and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who **at any time after entry is convicted** of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;

(5) **has failed** to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or **has been convicted** under section 266 (c) of this title, or under section 36 (c) of the Alien Registration Act, 1940, or **has been convicted** of violating or conspiracy to violate any provision of the Act entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes", approved June 8, 1938, as amended, or **has been convicted** under section 1546 of title 18 of the United States Code;

(6) **is or at any time has been, after entry,** a member of any of the following classes of aliens:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States; (ii) any other totalitarian party of the United States; (iii) the Communist Political Association; (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided,* That nothing in this paragraph, or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by

force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their

official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (G);

(7) **is engaged, or at any time after entry has engaged, or at any time after entry has had a purpose to engage,** in any of the activities described in paragraph (27) or (29) of section 212 (a), unless the Attorney General is satisfied, in the case of any alien within cate-

gory (C) of paragraph (29) of such section, that such alien **did not have knowledge** or reason to believe at the time such alien became a member of, affiliated with, or participated in the activities of the organization (and **did not thereafter and prior to the date upon which such organization was registered or required to be registered** under section 7 of the Subversive Activities Control Act of 1950 **have such knowledge or reason to believe**) that such organization was a Communist organization;

(8) in the opinion of the Attorney General, **has within five years after entry become** a public charge from causes not affirmatively shown to have arisen after entry;

(9) **was admitted** as a nonimmigrant **and failed** to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status;

(10) **entered** the United States from foreign contiguous territory or adjacent islands, **having arrived** there on a vessel or aircraft of a nonsignatory transportation company under section 238 (a) **and was** without the required period of stay in such foreign contiguous territory or adjacent islands following such arrival (other than an alien who is a native-born citizen of any of the countries enumerated in section 101 (a) (27) (C) and an alien described in section 101 (a) (27) (B));

(11) **is, or hereafter at any time after entry has been,** a narcotic drug addict, or who **at any time has been convicted** of a violation of any law or regulation relating to the illicit traffic in narcotic drugs, or who **has been convicted** of a violation of any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding,

transportation, sale, exchange, dispensing, giving away, importation or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate;

(12) by reason of any conduct, behavior or activity **at any time after entry became** a member of any of the classes specified in paragraph (12) of section 212 (a); or **is or at any time after entry has been** the manager, or **is or at any time after entry has been** connected with the management, of a house of prostitution or any other immoral place;

(13) **prior to, or at the time of any entry, or at any time within five years after any entry, shall have,** knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law;

(14) **at any time after entry, shall have been convicted** of possessing or carrying in violation of any law any weapon which shoots or is designed to shoot automatically or semiautomatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun;.

(15) **at any time within five years after entry, shall have been convicted** of violating the provisions of title I of the Alien Registration Act, 1940;

(16) **at any time after entry, shall have been convicted more than once** of violating the provisions of title I of the Alien Registration Act, 1940; or

(17) the Attorney General finds to be an undesirable resident of the United States by reason of any of the following, to wit: **has been or may hereafter be convicted** of any violation or conspiracy to violate any of the following Acts or parts of Acts or any amend-

ment thereto, the judgment on such conviction having become final, namely: an Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes", approved June 15, 1917, or the amendment thereof approved May 16, 1918; sections 791, 792, 793, 794, 2388, and 3241, title 18, United States Code; an Act entitled "An Act to prohibit the manufacture, distribution, storage, use, and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use, and possession of the same; and for other purposes", approved October 6, 1917; an Act entitled "An Act to prevent in time of war departure from and entry into the United States contrary to the public safety", approved May 22, 1918; section 215 of this Act; an Act entitled "An Act to punish the willful injury or destruction of war material or of war premises or utilities used in connection with war material, and for other purposes", approved April 20, 1918; sections 2151, 2153, 2154, 2155, and 2156 of title 18, United States Code; an Act entitled "An Act to authorize the President to increase temporarily the Military establishment of the United States", approved May 18, 1917, or any amendment thereof or supplement thereto; the Selective Training and Service Act of 1940; the Selective Service Act of 1948; the Universal Military Training and Service Act; an Act entitled "An Act to punish persons who make threats against the President of the United States", approved February 14, 1917; section 871 of title 18, United States Code; an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes", approved October 6, 1917, or any amendment thereof; the Trading With

the Enemy Act; section 6 of the Penal Code of the United States; section 2384 of title 18, United States Code; **has been convicted of any offense** against section 13 of the Penal Code of the United States **committed during the period of August 1, 1914, to April 6, 1917,** or of a conspiracy occurring **within said period** to commit an offense under said section 13 or of any offense **committed during said period** against the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, in aid of a belligerent in the European war; section 960 of title 18, United States Code; or

(18) **has been convicted** under section 278 of this Act or under section 4 of the Immigration Act of February 5, 1917.

(b) The provisions of subsection (a) (4) respecting the deportation of an alien convicted of a crime or crimes shall not apply (1) in the case of any alien who has subsequent to such conviction been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States, or (2) if the court sentencing such alien for such crime shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having been given prior to making such recommendation to representatives of the interested State, the Service, and prosecution authorities, who shall be granted an opportunity to make representations in the matter.

(c) An alien shall be deported as having procured a visa or other documentation by fraud within the meaning of paragraph (19) of section 212 (a), and to be in the United States in violation of this Act within the meaning of subsection (a) (2) of this section, if

(1) **hereafter** he or she **obtains** any entry into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into **less than two years prior to such entry** of the alien and which, **within two years subsequent to any entry** of the alien into the United States, shall be judicially annulled or terminated, unless such alien shall establish to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws; or (2) it appears to the satisfaction of the Attorney General that he or she has failed or refused to fulfill his or her marital agreement which in the opinion of the Attorney General **was hereafter made** for the purpose of procuring his or her entry as an immigrant.

(d) **Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act.**

(e) An alien, admitted as a nonimmigrant under the provisions of either section 101 (a) (15) (A) (i) or 101 (a) (15) (G) (i), and **who fails to maintain a** status under either of those provisions, shall not be required to depart from the United States without the approval of the Secretary of State, unless such alien is subject to deportation under subsection (a) (6) or (7) of this section.

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